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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,769	09/15/2003	Adam Grablick	6226US	1483

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MINNEAPOLIS, MN 55440

EXAMINER

FIDEI, DAVID

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,769

Applicant(s)

GRABLICK, ADAM

Examiner

David T. Fidei

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 27-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Claims 1-26 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 30, 2005.

2. Applicant's election with traverse of Group I in the reply filed on November 30, 2005 is acknowledged. The traversal is one the ground(s) that the a search can be made to all the inventions without a serious burden on the Examiner. This is not found persuasive because;

“For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That prima facie showing may be rebutted by appropriate showings or evidence by the applicant.”, see MPEP § 803. Applicant has not provided any showings but merely alleges there is no serious burden.

Insofar as the criteria for restriction practice establishes, there is a prima facie showing provided by the initial holding.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 25 and 26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP document 0 560 374 A2 (Koster). In figures 1-5 a consumer product display is disclosed comprising a display strip broadly shown as 1 divided into a lower section and an upper section. A hanging means 8 is disclosed along with

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lower section having a front face with an affixing means 2, 3 as shown in the various figures. A plurality of consumer products "Z" are attached thereto.

The rejection is applied in the alternative since the Examiner can not determine if the products are removably adhered to the lower section by exposed adhesive. To the extent that adhesive is not employed by Koster, it would have been obvious to one of ordinary skill in the art to use adhesive because the prior art of record shows adhesive to be a well known means of affixing products to a product display to one skilled in the art. From the substantial teachings of the prior art of record, the use of adhesive would have an obvious matter of design choice for selecting an affixing means.

As to claim 2, the lower section of the front face defines a plurality of discrete product affixing areas, each characterized by the exposed adhesive as shown in figures 1, 4 and 5.

Regarding claims 3 and 25, the surface area of the front face or length of the display strip is not known however, such a modification over any disclosure of Koster would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In *re Rose*, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, *Gardner v. TED Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claim 4, the plurality of discrete product affixing areas is configured to provide an exposed adhesive surface area that is less than the product footprint.

As to claim 11, a hole is defined by member 8.

As to claim 26, Official Notice is taken for the use of indicia on such card for advertisement, promotional or product information content. It would have been obvious to one of ordinary skill in the art to use the consumer display of Koster by including indicia in area 9 in view of Official Notice, in order to provide information conveying the product content.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-10 and 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP document 0 560 374 A2 (Koster) as applied to the claims above, and further in view of Hendricks et al (Patent no. 3,389,784). The difference between the claimed subject matter and Koster resides in each of the plurality of consumer products includes an outer package that resists tearing up to a maximum force, and further wherein each of the discrete product affixing areas is configured to establish an adhesive peel strength that is less than the maximum tear force of the outer package.

Hendricks et al deals with a similar problem as that confronted by applicant where the invention is to provide a controlled degree of adherence, see col. 1, lines 45-51. This is accomplished by providing less than full adherence to the product, i.e., the adhesive area being less than the article footprint, see col. 2, lines 54-62.

It would have been obvious to one of ordinary skill in the art to the product display of Koster by providing discrete product affixing areas to establish a peel strength that is less than maximum force of the package as taught by Hendricks et al in order permit easy separation from the display.

As to claims 6-10, a product is shown in Hendricks et al as candy in figure 9 that includes indicia which defines conventional viewing orientation, has a major and minor axis,

As to claims 15-21, template strip 38 defining a front face, a back face, an upper portion and a lower portion; and a carrier strip 32 defining a front face and a back face, the front face of the carrier strip being covered with an adhesive 34; wherein the front face of the carrier strip 32 is adhered to the back face of the template strip 38 such that at least a portion of the adhesive 34 remains exposed relative to the template strip to define an exposed adhesive, see figure 6.

Hendricks et al also discloses a wide variety of shapes and sizes in the template openings forming the exposed adhesive regions. In the present case, the particular shape of the openings, rectangular, circular is shown by Hendricks et al..

Regarding claims 22 and 23, the thickness of the template is not known however, such a modification over any disclosure of Hendricks et al would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claim 24, the upper portion of Koster includes a hole at 8.

7. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP document 0 560 374 A2 (Koster) as applied to the claims above, and further in view of Larson (Patent no. 3,458,037). The difference between the claims and Koster resides in the hanging means including a fold line formed in the upper section such that the upper section defines a leading free edge above the fold line; a first hole formed in the upper section above the fold line; and a second hole formed in the upper section below the fold line; wherein the first hole and the second hole are located relative to each other such that when the upper section is in an unfolded state the holes are linearly aligned perpendicular to the fold line and separated equidistant to the fold line, and when the upper section is in a folded state, the leading free edge is folded to the back face whereby the first hole and the second hole form a continuous hole through the upper section.

Larson teaches a product display in figure 4 where an upper section of card 12 includes a fold line 13 with a hole 18 formed in the upper section above the fold line; and a second hole also 18 formed in the upper section below the fold line; wherein the first hole and the second hole are located relative to each other such that when the upper section is in an unfolded state the holes are linearly aligned perpendicular to the fold line and separated equidistant to the fold line,

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and when the upper section is in a folded state, the leading free edge is folded to the back face whereby the first hole and the second hole form a continuous hole through the upper section, see figure 1. It would have been obvious to one of ordinary skill in the art to modify the hanging means of Koster by employing such an arrangement as taught by Larson, in order to provide a stronger, more reinforced top section for displaying the products.

As to claim 13, the leading edge is panel 12 and 16 are secured at 52, 53.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

8. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner’s action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

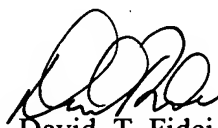
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The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei
Primary Examiner
Art Unit 3728

dtf
December 26, 2005